

## CCRB INVESTIGATIVE RECOMMENDATION

|  |  |                           |  |   |                                 |
|--|--|---------------------------|--|---|---------------------------------|
| Investigator:<br>Alyssa Rogowski                 | Team:<br>Squad #14   | CCRB Case #:<br>201901695 | <input checked="" type="checkbox"/> Force              | <input checked="" type="checkbox"/> Discourt. | <input type="checkbox"/> U.S.   |
|  |  |                           | <input checked="" type="checkbox"/> Abuse              | <input type="checkbox"/> O.L.                 | <input type="checkbox"/> Injury |
| Incident Date(s)<br>Monday, 02/11/2019 12:20 PM  | Location of Incident:<br>Springfield Boulevard and 91st Avenue | Precinct:<br>105          | 18 Mo. SOL<br>8/11/2020                                | EO SOL<br>3/28/2021                           |                                 |
| Date/Time CV Reported<br>Sun, 02/17/2019 4:35 PM | CV Reported At:<br>IAB   | How CV Reported:<br>Phone | Date/Time Received at CCRB<br>Mon, 02/25/2019 11:47 AM |   |                                 |

| Complainant/Victim | Type | Home Address |
|--------------------|------|--------------|
|                    |      |              |
|                    |      |              |

| Subject Officer(s)    | Shield | TaxID  | Command |
|-----------------------|--------|--------|---------|
| 1. SGT Daniel Palermo | 02573  | 949440 | 105 PCT |
| 2. POM Michael Geyer  | 12361  | 952777 | 105 PCT |
| 3. LT Anthony Gulotta | 00000  | 919140 | 105 PCT |

| Witness Officer(s)      | Shield No | Tax No | Cmd Name |
|-------------------------|-----------|--------|----------|
| 1. POM Sean Cox         | 18051     | 954674 | 105 PCT  |
| 2. POM William Hespeler | 24938     | 962474 | 105 PCT  |
| 3. POM Andrew Viscusi   | 20654     | 959258 | 105 PCT  |

| Officer(s)           | Allegation  | Investigator Recommendation |
|----------------------|---|-----------------------------|
| A.POM Michael Geyer  | Abuse: Police Officer Michael Geyer took photograph of § 87(2)(b)                           |                             |
| B.LT Anthony Gulotta | Force: Lieutenant Anthony Gulotta used physical force against § 87(2)(b)                    |                             |
| C.LT Anthony Gulotta | Abuse: Lieutenant Anthony Gulotta threatened § 87(2)(b) with the use of force.              |                             |
| D.LT Anthony Gulotta | Discourtesy: Lieutenant Anthony Gulotta spoke discourteously to § 87(2)(b)                  |                             |
| E.POM Michael Geyer  | Abuse: Police Officer Michael Geyer interfered with § 87(2)(b)'s use of a recording device. |                             |
| H.LT Anthony Gulotta | Abuse: Lieutenant Anthony Gulotta seized § 87(2)(b)'s property.                             |                             |
| I.SGT Daniel Palermo | Abuse: Sergeant Daniel Palermo detained § 87(2)(b)  |                             |

### **Case Summary**

On February 17<sup>th</sup>, 2019, § 87(2)(b) filed this complaint via call to IAB. The CCRB received this complaint on February 25<sup>th</sup>, 2019.

On February 11<sup>th</sup>, 2019, at around 11:00am, § 87(2)(b) and § 87(2)(b) were pulled over near the intersection of 91<sup>st</sup> Avenue and Springfield Boulevard in Queens by Police Officer Sean Cox and Police Officer William Hespeler, both of the 105<sup>th</sup> Precinct. § 87(2)(b) who was driving, refused to provide his license or registration. PO Cox stated that he smelled marijuana and instructed § 87(2)(b) to exit his vehicle. § 87(2)(b) refused and PO Cox and PO Hespeler requested back-up. Police Officer Andrew Viscusi, Police Officer Michael Geyer, Sergeant Daniel Palermo, and Lieutenant Anthony Gulotta, all of the 105<sup>th</sup> Precinct, responded.

During this stop, PO Geyer took a photograph of § 87(2)(b) (**Allegation A: Abuse of Authority**, § 87(2)(g)). Lieutenant Gulotta then ordered PO Cox, PO Hespeler, PO Viscusi, and Sgt. Palermo to remove § 87(2)(b) from his vehicle (**Allegation B: Force**, § 87(2)(g)). As § 87(2)(b) was being handcuffed, Lieutenant Gulotta cycled his taser and told § 87(2)(b) “You’re gonna get tased” (**Allegation C: Abuse of Authority**, § 87(2)(g)). Lieutenant Gulotta stood on § 87(2)(b)’s hand (**Allegation B continued**).

After § 87(2)(b) was handcuffed, Lieutenant Gulotta told him, “no one gives a shit about your record” and “get the fuck in the marked car” (**Allegation D: Discourtesy**, § 87(2)(g)).

After § 87(2)(b) was arrested, PO Geyer instructed § 87(2)(b) to exit the vehicle. § 87(2)(b) complied and PO Geyer allegedly interfered with his use of a recording device (**Allegation E: Abuse of Authority**, § 87(2)(g)).

Officers transported § 87(2)(b)’s vehicle to the 105<sup>th</sup> Precinct (**Allegation F: Abuse of Authority**, § 87(2)(g)). § 87(2)(b) was also taken back to the 105<sup>th</sup> Precinct while officers investigated the ownership of the vehicle and was ultimately released with a summons for possession of marijuana (**Allegation G: Abuse of Authority**, § 87(2)(g)).

§ 87(2)(b)  
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§ 87(2)(b) provided a cellphone video capturing a portion of this incident (Board Review 03). The investigation also obtained 12 body-worn camera videos (BWC) from eight officers involved in this incident (Board Reviews 04 - 15).

Case #202003691 was generated to separately handle the allegations falling under the RTKA, which implicates NYPD training. As such, these allegations will not be discussed in this report.

### **Findings and Recommendations**

#### **Allegation A—Abuse of Authority: Police Officer Michael Geyer took a photograph of**

§ 87(2)(b)

Between 9:22-9:43 in PO Geyer’s BWC, PO Geyer takes photographs of § 87(2)(b) on a Department-issued cellphone (Board Review 10). § 87(2)(b) asks PO Geyer why he is taking photographs of him and PO Geyer replies that he is photographing § 87(2)(b) because the officers have to identify him.

PO Geyer stated that he took a photograph of § 87(2)(b) on a Department-issued cell phone in case the officers needed it to identify the driver (Board Review 19).

According to NYPD Operations Order Number 20, police officers are permitted, but not required, to use department issued smartphones to photograph or video record all vehicle stops (Board Review 33).

§ 87(2)(g)

**Allegation B—Force: Lieutenant Anthony Gulotta used physical force against § 87(2)(b)**

The entirety of this incident, which lasted around 40 minutes, is captured on PO Cox' and PO Hespeler's BWCs (Board Review 04 - 06, 07 - 08).

§ 87(2)(b) stated that after PO Cox and PO Hespeler approached his vehicle, PO Cox asked § 87(2)(b) for his license and registration and § 87(2)(b) informed him that he did not have either. § 87(2)(b) asked why he had been stopped and PO Cox first stated that he had been pulled over for failing to stop in the crosswalk then stated that § 87(2)(b) had been pulled over for failing to signal. § 87(2)(b) replied that was not a crime. PO Cox also stated that he had pulled § 87(2)(b) over because of obstructed view, referring to an air freshener tree hanging from § 87(2)(b)'s rearview mirror. PO Cox continued to ask § 87(2)(b) to identify himself and § 87(2)(b) repeated that there was no lawful reason to stop him. After about 20 minutes, Sgt. Palermo and approximately two additional officers arrived on scene. § 87(2)(b) continued to refuse to identify himself. After about 10 more minutes, Lieutenant Gulotta and several additional officers arrived. Lieutenant Gulotta introduced himself to § 87(2)(b) and asked § 87(2)(b) to provide identification. § 87(2)(b) who remained seated in his vehicle with the front driver's side door open, repeatedly asked Lieutenant Gulotta to give a lawful reason for the stop. Lieutenant Gulotta then ordered PO Hespeler, PO Viscusi, PO Cox, and Sgt. Palermo to get § 87(2)(b) out of the car. Given that Lieutenant Gulotta directed subordinate officers to use physical force on § 87(2)(b) Lieutenant Gulotta has been pled as the subject of these allegations.

PO Hespeler, PO Viscusi, PO Cox, and Sgt. Palermo, grabbed § 87(2)(b) and pulled him out of the car. § 87(2)(b) was then pulled to the ground and while he was face down on the ground, Sgt. Palermo pushed his knee into § 87(2)(b)'s back as he pulled one of § 87(2)(b)'s arms behind his back. PO Hespeler pushed § 87(2)(b)'s face against the pavement, which resulted in scratches to § 87(2)(b)'s face. Officers ordered § 87(2)(b) to stop resisting, and § 87(2)(b) attempted to give Sgt. Palermo his other arm but was unable to do so. § 87(2)(b) noted that upon viewing his cellphone footage after the incident, he saw that Lieutenant Gulotta stood on his free hand, which had made it seem like he was resisting being handcuffed (Board Review 03, 7:18 – 7:31).

§ 87(2)(b) refused to provide a statement to the CCRB regarding the incident. (Board Review 02).

PO Hespeler's BWC (Board Review 08, 8:20– 9:20), PO Viscusi's BWC (Board Review 10, 19:06–20:19), and Sgt. Palermo's BWC (Board Review 09, 19:19 –20:30) capture PO Cox, PO Hespeler, PO Viscusi, and Sgt. Palermo removing § 87(2)(b) from his vehicle and placing him in handcuffs. When the officers approach and order § 87(2)(b) to exit the vehicle, § 87(2)(b) states that he still has his seatbelt on and remains seated. PO Cox and PO Hespeler unbuckle § 87(2)(b)'s seatbelt then PO Hespeler, PO Cox, and PO Viscusi grab onto § 87(2)(b)'s arms and jacket and pull him out of the vehicle. The officers pull several times before § 87(2)(b) is removed from the car. Once on the ground, PO Viscusi and Sgt. Palermo handcuff § 87(2)(b) while PO Hespeler holds § 87(2)(b)'s head and upper body against the ground. At no point in the BWC is Sgt. Palermo clearly seen with a knee in § 87(2)(b)'s back.

Lieutenant Gulotta, PO Cox, PO Hespeler, PO Viscusi, Sgt. Palermo, and PO Geyer were all interviewed about this incident and provided statements consistent with both § 87(2)(b)'s testimony and the footage from this incident (Board Review 17-22). The officers stated that in addition to § 87(2)(b)'s failure to comply throughout the stop, the vehicle itself was unregistered. PO Cox, PO Viscusi, PO Geyer, and Sgt. Palermo added there was a strong odor of marijuana emanating from the vehicle.

Lieutenant Gulotta stated that he approached § 87(2)(b) and asked him numerous times to provide his driver's license but § 87(2)(b) refused to identify himself. § 87(2)(b) was verbally combative and uncooperative; he interrupted Lieutenant Gulotta and tried to speak over him, and



§ 87(2)(b) stated that after Lieutenant Gulotta ordered other officers to pull him out of the car, Lieutenant Gulotta pulled out his taser and made a sound with it like he was going to shoot him and told § 87(2)(b) “You are going to get tased.”

In PO Geyer’s BWC (Board Review 11, 18:57-19:30) and PO Viscusi’s BWC (Board Review 10, 19:09-19:40), Lieutenant Gulotta pulls out his taser and an electric clicking sound emanates from the taser. Lieutenant Gulotta tells § 87(2)(b) “You’re gonna get tased” as the officers pull him from the vehicle.

Lieutenant Gulotta stated that while the officers were removing § 87(2)(b) from the vehicle, he removed his taser and tested it because § 87(2)(b) was resisting by tensing up, not removing his seatbelt, and refusing to sit up or exit the vehicle. Lieutenant Gulotta therefore feared that § 87(2)(b) might fight. Lieutenant Gulotta stated that officers are trained to test their tasers before using them to make sure that the device is functioning and that when a taser is tested, the device emits an electric clicking sound and an electric current is displayed. After testing the taser, Lieutenant Gulotta held it next to him and ordered § 87(2)(b) to exit the vehicle and stated that he was going to be tasered. Lieutenant Gulotta put the taser away when § 87(2)(b) was handcuffed.

NYPD Patrol Guide Procedure 221-08, which outlines the use of conducted electrical weapons (CEWs) such as a taser, states that, “A CEW should only be used against persons who are actively resisting, exhibiting active aggression, or to prevent individuals from physically injuring themselves or other persons actually present.” This procedure defines active resistance as, “physically evasive movements to defeat a member of service’s attempt to control, including bracing, tensing, pushing, or verbally signaling an intention to avoid or prevent being taken into or retained in custody” (Board Review 25). Officers cannot use a taser on individuals who are passively resisting, which is defined as minimal physical action to prevent a member from performing their lawful duty including a subject failing to comply with a lawful command and/or a subject going limp.

It is undisputed that by the time Lieutenant Gulotta removed his taser, § 87(2)(b) had verbally and physically refused to comply with officers’ instructions to identify himself and exit his vehicle for about thirty minutes and that officers intended to take § 87(2)(b) into custody. § 87(2)(b)

§ 87(2)(b), § 87(2)(g)

**Allegation D—Discourtesy: Lieutenant Anthony Gulotta spoke discourteously to § 87(2)(b)**

In his BWC, Lieutenant Gulotta can be heard stating both, “I don’t give a shit about your record,” in response to a handcuffed § 87(2)(b) accusing the officers of taking his property (Board Review 11, 4:02). Later in his BWC, Lieutenant Gulotta tells § 87(2)(b) “You’re under arrest. Get the fuck in the car” in response to § 87(2)(b) stating he was being kidnapped (Board Review 11,9:16).

Lieutenant Gulotta stated that after § 87(2)(b) was handcuffed, § 87(2)(b) repeated that he wanted it on the record that his property was being taken by the officers. Lieutenant Gulotta acknowledged stating, “I don’t give a shit about your record,” in frustration at § 87(2)(b). Lieutenant Gulotta denied that he told § 87(2)(b) to “get the fuck in the car” and testified that the statement captured in his BWC footage was made at his officers, not § 87(2)(b). Lieutenant Gulotta was annoyed because the officers took longer than necessary to secure a transport car. Lieutenant Gulotta explained that while he told § 87(2)(b) he was under arrest immediately prior to stating “get the fuck in the car,” the statement to “get the fuck in the car” was made at his officers, not at § 87(2)(b).

§ 87(2)(b), § 87(2)(g)

As found in NYPD Disciplinary Case Number 2013-10143, police officers are held to a high standard of conduct, traditional rules of etiquette cannot be applied to stressful enforcement situations (Board Review 26).

**Allegation E—Abuse of Authority: Police Officer Michael Geyer interfered with § 87(2)(b)'s use of a recording device.**

PO Geyer's body-worn camera captures him telling § 87(2)(b) to put his phone away immediately prior to handcuffing him (Board Review 11, 20:00- 20:50).

PO Geyer stated that after § 87(2)(b) was handcuffed, PO Geyer ordered § 87(2)(b) to exit the vehicle and told him he was being detained for further investigation into the vehicle and the odor of marijuana. § 87(2)(b) exited the vehicle while recording on a cellphone. PO Geyer intended to handcuff § 87(2)(b) and as such, instructed § 87(2)(b) to put his phone down. Aside from the need to place § 87(2)(b) in handcuffs, there was no other reason that PO Geyer instructed § 87(2)(b) to put the phone down. § 87(2)(b) was ultimately summonsed for possession of marijuana.

NYPD Patrol Guide Procedure 203-29 states that the right to lawfully record police activity applies to bystanders but that this right to record police action can be limited when a violation of law is committed by the individual(s) who are observing/videotaping (Board Review 27).

§ 87(2)(b), § 87(2)(g)

**Allegation F—Abuse of Authority: Lieutenant Anthony Gulotta seized § 87(2)(b)'s property.**

After § 87(2)(b)'s arrest, his vehicle was seized by officers and taken back to the 105<sup>th</sup> Precinct stationhouse. Given that Lieutenant Gulotta was the supervisor on scene, this allegation has been pled to him.

According to the property vouchers prepared by PO Cox, on February 11<sup>th</sup>, 2019, § 87(2)(b)'s vehicle was vouchered to determine true owner. On February 19<sup>th</sup>, 2019, the vehicle was released to § 87(2)(b) after he proved ownership (Board Review 34).

NYPD Patrol Guide Procedure 218-19 outlines that a vehicle can be seized following an arrest if the true owner cannot be determined (Board Review 35).

§ 87(2)(b), § 87(2)(g)

**Allegation G—Abuse of Authority: Sergeant Daniel Palermo detained § 87(2)(b)**

§ 87(2)(b) was handcuffed on scene and transported approximately half a mile to the 105<sup>th</sup> Precinct stationhouse by officers.

According to the Command Log from the 105<sup>th</sup> Precinct, § 87(2)(b) was checked into the desk at 1:00pm and was released with a summons at 2:20pm (Board Review 36).

Lieutenant Gulotta stated that because the vehicle stop was executed by members of the anticrime team, it was Sgt. Palermo's decision to bring § 87(2)(b) to the stationhouse. As such, this

allegation has been pled to Sgt. Palermo.

Sgt. Palermo stated that § 87(2)(b) was placed in handcuffs and brought back to the 105 Precinct stationhouse because there was an ongoing investigation into the vehicle. The vehicle was discovered to be unregistered on scene and was suspected to be stolen. Sgt. Palermo stated that the vehicle was not searched on scene because they had been on scene for some time and the scene was hostile: § 87(2)(b) and § 87(2)(b) were yelling, loud and noncompliant. Because the stationhouse was nearby, the officers decided to bring the vehicle and § 87(2)(b) back and conduct the investigation on the vehicle in a more stable environment. § 87(2)(b) was ultimately issued a summons for the unlawful possession of marijuana following the recovery of marijuana from the vehicle at the 105 Precinct stationhouse.

Ikezi v. City of New York, 2017 U.S. Dist. LEXIS 50742 (E.D.N.Y. March 31, 2017) addresses in part the factors to evaluate whether an investigatory detention was more intrusive than necessary, which include the amount of force used by the police, the need for such force, the number of officers involved, whether the police suspected the suspect of being armed, the duration of the stop and detention, the extent to which an individual's freedom of movement was restrained, and the physical treatment of the suspect, which includes the use of handcuffs. No one factor is considered to be determinative and rather the court must evaluate the totality of the circumstances (Board Review 37).

§ 87(2)(b), § 87(2)(g)

#### **Civilian and Officer CCRB Histories**

- This is the first CCRB complaint to which § 87(2)(b) has been party (Board Review 29).
- This is the first CCRB complaint to which § 87(2)(b) has been party (Board Review 30).
- PO Michael Geyer has been a member-of-service for seven years and has been a subject in four CCRB complaints and four allegations, none of which have been substantiated. PO Geyer's CCRB history does not reflect any apparent pattern pertinent to this investigation.
- Lieutenant Anthony Gulotta has been a member-of-service for 22 years and has been a subject in 10 CCRB complaints and 20 allegations, one of which was substantiated.
  - Case 201310051 involved a substantiated allegation of authorizing the removal of individuals from a residence. The Board recommended formalized training and the NYPD concurred.
  - § 87(2)(g)
- Sgt. Daniel Palermo has been a member-of-service for nine years and has been a subject in one CCRB complaint and one allegation, which was not substantiated. § 87(2)(g)

#### **Mediation, Civil and Criminal Histories**

- This complaint was not suitable for mediation.
- As of December 10<sup>th</sup>, 2019, the New York City of the Office of the Comptroller has no record of a Notice of Claim being filed in regard to this complaint (Board Review 33).

• § 87(2)(b)  
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- According to the Office of the Court Administration (OCA), § 87(2)(b) has no history of convictions in New York City (Board Review 32).

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Squad No.: 14

Investigator: Alyssa Rogowski Inv. Rogowski 6/2/2020  
Signature Print Title & Name Date

Squad Leader: Cassandra Fenkel IM Cassandra Fenkel 6/1/2020  
Signature Print Title & Name Date

Reviewer: \_\_\_\_\_  
Signature Print Title & Name Date